IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 309 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

KAILASH INVESTMENT PVT.LTD. - Respondent(s)

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Appearance :
MR BB NAIK for Applicant(s) : 1,
MR BD KARIA with MR RK PATEL for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 01/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

At the instance of the revenue, the following question has been referred to this court for its opinion

under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as '**the Act**') by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B'.

> “Whether the Appellate Tribunal is right in law and on facts in holding that the income-tax officer was not justified in restricting deduction under section 80M to the extent of dividend declared by the assessee?”

2. We have heard Sr. Standing Counsel Shri B.B. Naik appearing for the revenue and learned advocate Shri B.D. Karia for the respondent assessee.

3. The learned advocates have drawn our attention to an order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' in the case of Malbar Investment (P) Ltd. v. The Income-tax Officer Com. Cir. III, Ahmedabad (ITA No. 25(Ahd)/1987), wherein a similar question had been decided in favour of the assessee. Being aggrieved by the said order, a reference application had been filed, which had been rejected by the Tribunal by its order dated 30.11.1990 in Reference Application No. 945/Ahd/1990. The revenue did not file an application under sec. 256(2) of the Act before this court. Thus, the decision rendered by the Tribunal in the case of Malbar Investment Pvt. Ltd. v. The ITO, Com. Cir. III,

Ahmedabad has been accepted by the revenue.

4. As stated hereinabove, the question of law referred to in the case of Malbar Investment Pvt. Ltd. (supra) and in the present case being the same, and once the revenue has decided to accept the said decision, in view of the law laid down by the Hon'ble Supreme Court in the case of Union of India and ors. v. Kaumudini Narayan Dalal and anr., 249 ITR 219, and more particularly when no justifiable ground has been advanced by the learned counsel appearing for the revenue, in our opinion, we need not answer the question referred to this court.

The reference stands disposed of accordingly with no order as to costs.

(Anil R. Dave, J.)

(K.A. Puj, J.)

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